

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In Re:

FERREL L. AGARD,

Debtor.

On appeal from the United States
Bankruptcy Court for the Eastern
District of New York
Case No. 8-10-77338-REG

**MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.**

Appellant,

v.

**FERREL L. AGARD, ROBERT L. PRYOR,
UNITED STATES TRUSTEE, AND
SELECT PORTFOLIO SERVICING, INC.**

Appellees.

United States District Court Case
Nos. **10-cv-01826-JS** and

10-cv-02366-JB **FILED**

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ NOV 02 2011 ★

LONG ISLAND OFFICE

MOTION UNDER FED. R. BANKR. P. 8011 TO CONSOLIDATE APPEALS

Mortgage Electronic Registration Systems, Inc. ("MERS"), the Appellant in the above captioned proceedings, submits this motion under Federal Rule of Bankruptcy Procedure 8011 to consolidate two related bankruptcy appeals that are currently pending before the United States District Court for the Eastern District of New York under Case Nos. 10-cv-01826 (Hon. Joanna Seybert) and 10-cv-02366 (Hon. Joseph F. Bianco). As there is no Bankruptcy Rule or Local Rule governing the consolidation of appeals from Bankruptcy cases, pursuant to Federal Rule of Bankruptcy Procedure 8018(b), this Court may apply the Federal Rules of Appellate Procedure. Under Federal Rule of Appellate Procedure 3(b)(2), an appellate court may consolidate separate timely notices of appeal.

MERS, the appellant in both appeals, timely filed its cross-appeal with respect to portions¹ of the Eastern District of New York Bankruptcy Court's February 11, 2011 Order which incorporates its Memorandum and Decision dated February 10, 2011 ("Order"). MERS thereafter timely filed its appeal of the Bankruptcy Court's March 30, 2011 Order denying MERS' motion for reconsideration of the February 11, 2011 Order.

The later appeal is with respect to MERS' motion to reconsider the Order, therefore the issues MERS intends to brief with respect to its cross-appeal and appeal are identical. Consolidating the appeals under Case No. 10-cv-01826 will promote judicial efficiency by establishing a single schedule for the proceedings and removing the need for the parties and this Court to make redundant docket entries under a separate case number. Therefore, MERS respectfully requests that this Court enter an order consolidating the appeal with the cross-appeal, and directing the consolidated appeals to proceed under Case No. 10-cv-01826, before the Hon. Joanna Seybert.

Dated: June 2, 2011

¹ MERS appealed the February 11, 2011 Order *to the extent that it exceeds the application of the Rooker-Feldman doctrine and res judicata* in granting the requested relief from stay. MERS does not appeal the Bankruptcy Court's grant of relief from stay, itself. MERS appeals on the grounds that the Memorandum Decision ("Decision"), which was incorporated into the February 11, 2011 Order, violated the principle of judicial restraint by reaching issues that were unnecessary to reach and does not adhere to New York law. The Decision with respect to MERS and the MERS® System is reversible because the Court was without jurisdiction to reach these issues. Significantly, the Decision is affected by several errors of law and fact. Specifically, the Court substantially misinterpreted the facts and misapplied the law with respect to MERS and the MERS® System.

